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**RESPONSE UNDER 37 CFR 1.116
EXPEDITED PROCEDURE
EXAMINING GROUP 3641**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

IN RE THE APPLICATION OF:

PAPER:

Inventor : Mitchell R. Swartz

Serial no. 09/750, 480

Filed: 12/28/00

For: METHOD AND APPARATUS
TO MONITOR LOADING
USING VIBRATION

This is a continuation of Serial no. 07/371,937

Filed: 06/27/89

Group Art Unit: 3641
Examiner: R. Palabrica

October 29, 2010

Commissioner for Patents
Alexandria, VA 22313-1450

**PETITION to the COMMISSIONER
Pursuant to 37 CFR 1.181**

1. This petition is made pursuant to 37 C.F.R. 1.181 to the Commissioner of Patents and is made to invoke his supervisory authority to correct a wrongful situation involving the appearance of impropriety in a "DECISION ON PETITION" [Exhibit "A" attached, hereinafter "Decision"] mailed October 19, 2010. Pursuant to 37 C.F.R. 1.181, there is no fee. This Petition is reasonable based upon the reasons stated below and the facts as discussed in the Declaration supporting this Petition.

2. In the discussion below, reference is made to the Declaration of Dr. Mitchell Swartz (hereinafter called the "Swartz Declaration") dated October 29, 2010.

3. Appellant received a "Decision" mailed October 19, 2010, signed by Mr. Carl Friedman, which is absolutely at variance with the facts. The flawed, disingenuous "Decision" does not even relate to the Petition. The flawed, disingenuous "Decision" does not discuss even one of the arguments in the Petition. The flawed, disingenuous "Decision" does not discuss the Declaration which was submitted supporting said Petition. The flawed, disingenuous "Decision" does not discuss the Exhibits which accompanied said Petition. Instead, the flawed, disingenuous "Decision" creates a false impression that the above-entitled invention was abandoned based upon false and disingenuous statements in the flawed "Decision". Nothing it states could be further from the truth.

4. TIME TABLE

06/27/1989 The original specification and claims filed; '937
 09/10/1998 Order of the Board of Patent Appeal for Examiner to Consider Declarations and other Matters
 01/18/2001 Filing of Pet. Cert. to the US Supreme Court (00-1191) and Motion to Reconsider (no response by the USPTO; in the words of the clerk at POTUS this is the first time ever):
 12/28/2000 Filing of Continuation '480
 01/14/2004 Final of '480
 05/09/2004 Notice of Appeal (with payment of fees)
 07/02/2004 Appeal Brief for '480
 10/19/2004 Notice of Board of Patent Appeal of False Statements by Dr. Palabrica
 01/11/2005 *nunc pro tunc* "(new) Final" fabricated by Dr. Palabrica to remove case from Board of Patent Appeal (obstruction of justice to prevent action by Board of Patent Appeal)
 04/05/2005 Petition for Removal of Dr. Palabrica
 04/06/2005 Filing of Continuation '677
 (because of harassment and obstruction of justice by Dr. Palabrica)
 10/20/2009 Filing of Continuation '258 - which was "taken" by Dr. Palabrica
 10/19/2010 present "Decision" to 04/05/2005 Petition for Removal of Dr. Palabrica from future applications

5. The flawed "Decision" states,

"The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of January 11, 2005. The reply to a final Office action must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that prima facie places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2)."

[false statement by Mr. Friedman in the flawed "Decision" of 10/19/2010]

This is absolutely incorrect. It is at variance with the record. The Appellant (in '480) and Applicant (in '258) disputes this. The Petition was about an abuse by the Examiner (see below). A Notice was sent to the Board of Patent Appeal concerning false statements by Dr. Palabrica. To prevent action by the Board of Patent Appeal, Dr. Palabrica fabricated a *nunc pro tunc* "(new) Final". This led to a Petition for Removal of Dr. Palabrica and a Filing of Continuation, ie. '677. These actions were necessary because of the never-ending harassment, disingenuous statements, and obstruction of justice by Dr. Palabrica. As the Swartz Declaration states,

"The Decision does not even relate to what was in the Petition. The Decision ignored the arguments and the Declaration supporting the Petition. I sent the Petition because of abuse against me by the Examiner, Dr. Palabrica. I included detailed, substantive reasons supported by Evidence and Declarations. It has all been ignored."

The second final Office action was January 11, 2005. A filing of a continuing application under 37 CFR 1.53(b) was made on time.

The application was never abandoned.

There was never a failure to timely file a reply.

[underlined and bold for emphasis]

6. The flawed "Decision" states,

"A petition under 37 CFR 1.181 was filed on April 8, 2005. This petition was denied by the Technology Center 3600 Director on May 10, 2005. This petition was the only response filed by applicant during the response time set in the final Office action."

[false statement by Mr. Friedman in the flawed "Decision" of 10/19/2010]

This is absolutely incorrect. It is at variance with the record. The Appellant (in '480) and Applicant (in '258) disputes this. The Continuation was filed appropriately (see #3 above). The date stamp of the USPTO confirms this as does the filing date.

7. The flawed "Decision" states,

"A Notice of Abandonment was mailed September 5, 2006 which noted that no response had been received in reply to the Office letter mailed on "06 July 2005". Petitioner argues that the abandonment was improper since he had never received an Office letter mailed July 6, 2005. A review of the file shows that, as indicated by petitioner, there is no Office letter or any other Office communication mailed on July 6, 2005."

[false statement by Mr. Friedman in the flawed "Decision" of 10/19/2010]

The above is absolutely incorrect. It is at variance with the record. The Appellant (in '480) and Applicant (in '258) disputes this. The Applicant had filed a Continuation on time. There was no reason to respond since the Applicant's Petition was about abuse that the Applicant has suffered by the Examiner. The Petition was not about any recent abandonment but instead contained numerous examples of the Examiner's disingenuity and misbehavior under color of law.

The above is also absolutely incorrect because the Applicant made several communications. Applicant's Communications with the Office included contacting the Board of Patent Appeal (describing the abuse by the Examiner to further establish a salient record) and under the timely filed Continuation of the above-entitled patent application ('677). The proof is that the Continuation was received on time (see #3 above). The date stamp of the USPTO confirms this as does the filing date.

8. The flawed "Decision" states,

"However, petitioner's argument is not convincing of improper abandonment. Abandonment is a fact of law. The final Office action mailed January 11, 2005 was not properly responded to in a timely manner by applicant. ... Therefore, the petition to withdraw the holding of abandonment is dismissed."

[false statement by Mr. Friedman in the flawed "Decision" of 10/19/2010]

This is absolutely incorrect. It is at variance with the record. The Appellant (in '480) and Applicant (in '258) disputes this. The Petition was about an abuse by the Examiner and not about abandonment. As the Swartz Declaration states,

"Instead of responding at all, the Decision has fabricated a false impression that the above-entitled invention was abandoned based upon nothing more than false statements by Mr. Friedman. Patent application '480 was not abandoned. The second final Office action was on January 11, 2005. I filed a valid Continuation. The date stamp of the USPTO confirms this as does the filing date of patent application '258."

The Petition made by the Applicant was about proven abuse by the Examiner, long supported by Exhibits including un rebutted Declarations. The Petition to which the "Decision" responded (ignoring every issue therein and inventing a purported abandonment) requested the recusal of Dr. Palabrica for reasons supported by Evidence and Declarations, therein attached.

The Petition stated at the end,

"WHEREFORE, with this Petition supported by Affidavit, the Applicant respectfully requests relief from the latest improper actions of the Examiner and his Supervisor. They have refused to respond to Applicant's arguments. They have refused to respond to Applicant's Declarants. They have clouded the record with two 'finals'. It is impossible for the Applicant to respond to two different Finals and a pattern which is not consistent with Office rules by the Examiner. Therefore, to clean the record and make it clear, Appellant is now forced to file a Continuation. The Appellant hereby requests that, first, the Office refund Appellant's costs for the wasted Appeal to the Board. This amount is \$20,000.00 Furthermore, the Appellant hereby requests that given Exhibit "G", that the Office and the Commissioner immediately act to move this action to different Group Art and to recuse the Examiner and his Supervisors hereinafter from all of Appellant's applications. Attention of the Court is directed to the fact that failure to connect this in the light of said Exhibit "G" would reasonably be interpreted as an admission by the Office that said policy denying rights to Applicant and denying energy and inventions to America as itemized in said Exhibit "G" not only continues, but continues with the willful and explicit approval of both the Commissioner and the Office. "

9. Nowhere is there any mention of the fact that the purpose of the Petition was to remove abandonment like the erroneous, flawed "Decision" purports.

The "Decision" is an unfair, improper *nunc pro tunc* effort to discriminate against the Applicant by fabricating and making up an "abandonment" which was never there.

The Decision fabricated by Carl Friedman is egregious and odious because it has fabricated an abandonment where none ever existed.

10. The Decision fabricated by Carl Friedman is egregious and odious because it falsely claims Applicant did not reply when the date stamp of the Office heralds that Applicant did. The Decision must be revoked and such scurrilous statements removed. There is the appearance of impropriety in this manufactured, odious creation.

11. In addition, attention of the federal Court and the investigating authorities is directed to the salient fact that the egregious Decision has completely ignored all the Exhibits, the supporting Declaration, and the Petition itself. The egregious Decision has completely ignored all the arguments, and even the entire gravamen of the subject matter of the Petition.

12. Consistent with the obstruction of justice involved, attention is also directed to fact that in the "Decision" which ignored the Petition and the record, it is impossible to tell how Carl Friedman weighed Petitioner's arguments. There is absolutely no way for the Petitioner to present Carl Friedman's reasons for rejection to the Board of Appeals or the federal court. The Petitioner had a right to know the substantive, precise reason, and the scientific basis, or authority which allows Carl Friedman to dismiss this Argument by the Petitioner without accurate citation, relevant analysis, or substantive coherent response.

13. The present Petition is an honest attempt for judicial economy by allowing for the Commissioner and the USPTO to correct this matter before filing state and federal civil law suits seeking damages of \$10,000 a day going back to the original filing of '937. The Office has shown (including by the present flawed "Decision" which fabricates an "abandonment" when there was none) systematic conspiratorial behavior to violate Appellant's civil rights. Specifically, this group now includes Carl Friedman, Ricardo Palabrica, David Bricci, Robert W Bahr, Janice A. Falcone, Sharon Gibson, Robert Oberleitner, Richerd K. Seidel, Arthur Grimley, David Bricci, Charles Pearson, and Jon W. Dudas, all individually and as Officers.

14. In the present "Decision", the record has been distorted by Carl Friedman has the appearance of impropriety. It has occurred during an obstruction of justice -- and a request for relief. Furthermore, said obstruction of justice has egregiously occurred AFTER willful violations by the USPTO were sent (i.e. Notification) where said violations now may include state and federal offenses under color of law, using false statements and fraud, including but not limited to, Title 18 U.S.C. §1341, Mail Fraud, 18 U.S.C. §1001, Presenting a False Document to an Agent of the United States Government, 18 U.S.C. §1027 False statements and concealment of facts in relation to documents required by the Employee Retirement Income Security Act of 1974 and other possible offenses including civil and/or criminal RICO violations, 18 U.S.C. §§1961-68 (RICO

Act), 18 U.S.C. §1001 (False Statements to Agents of the U.S. Government), 18 U.S.C. §1341 (Mail Fraud), and 18 U.S.C. §241 (Conspiracy Against Civil Rights), and the Espionage Act of 1917, 50 U.S.C. 32 (a).

15. This matter cannot be moot because Dr. Palabrica has "taken" the Continuation '258 and purported that '480 was abandoned. Those false statements and action have the appearance of impropriety and make the Petition relevant and necessary for truth in all federal documents.

WHEREFORE, to simply correct the record, this Petition supported by Affidavit respectfully requests relief from the improper action of the Office in the flawed "Decision". As the record and date stamps of the USPTO demonstrate there has never been any abandonment -- implying that the egregious "Decision" has fabricated its disingenuous claim that there was no response, when in fact both the date stamps and the filing date of '677 all demonstrate that what it purported in the "Decision" is simply not true.

Respectfully submitted,



Mitchell Swartz, ScD, MD

CERTIFICATE OF MAILING [37 CFR 1.8(a)]

October 29, 2010

To Whom it Does Concern:

I hereby certify that this correspondence will be deposited with the United States Postal Service by First Class Mail, postage prepaid, in an envelope addressed to

The Commissioner for Patents
Alexandria, VA
22313-1450
on the date below.

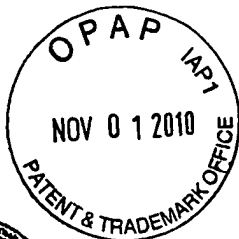
Thank you.

October 29, 2010

Sincerely,



M. Swartz Weston, MA 02493



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1480
Alexandria, VA 22313-1480
www.uspto.gov

Exhibit "A"

Mitchell R. Swartz, ScD, EE, MD
16 Pembroke Road
Weston MA 02493

MAILED

OCT 19 2010

OFFICE OF PETITIONS

In re Application of
Mitchell R. Swartz
Application No. 09/750,480
Filed: December 28, 2000
Attorney Docket No.

ON PETITION

This is in response to the petition under 37 CFR 1.181, filed September 13, 2006, which is being treated as a petition to withdraw the holding of abandonment of the above identified application.

The petition is **DISMISSED**.

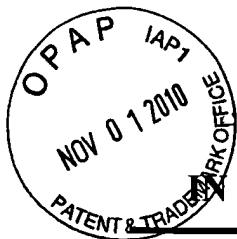
Any request for reconsideration of this decision should be submitted within two (2) months from the mail date of this decision and be entitled "Renewed Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181." See 37 CFR 1.181(f).

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of January 11, 2005. The reply to a final Office action must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that prima facie places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2).

A petition under 37 CFR 1.181 was filed on April 8, 2005. This petition was denied by the Technology Center 3600 Director on May 10, 2005. This petition was the only response filed by applicant during the response time set in the final Office action.

A Notice of Abandonment was mailed September 5, 2006 which noted that no response had been received in reply to the Office letter mailed on "06 July 2005".

Petitioner argues that the abandonment was improper since he had never received an Office letter mailed July 6, 2005. A review of the file shows that, as indicated by petitioner, there is no Office letter or any other Office communication mailed on July 6, 2005.

**THE UNITED STATES PATENT AND TRADEMARK OFFICE**

IN RE THE APPLICATION OF:

PAPER:

Inventor : Mitchell R. Swartz

Serial no. 09/750, 480

Filed: 12/28/00

For: METHOD AND APPARATUS
TO MONITOR LOADING
USING VIBRATIONGroup Art Unit: 3641
Examiner: R. Palabrica

October 29, 2010

DECLARATION OF DR. MITCHELL SWARTZ

I, Mitchell R. Swartz, declare that I am a citizen of the United States of America and the inventor of the invention described in the above-entitled application.

1. I have worked in the fields of nuclear physics, calorimetry, electrical engineering, and energy production and conversion for more than four decades, including experimental projects at the Massachusetts Institute of Technology and Massachusetts General Hospital

2. I received a "DECISION ON PETITION" [Exhibit "A" attached, hereinafter "Decision"] mailed October 19, 2010. The Decision does not even relate to what was in the Petition. The Decision ignored the arguments and the Declaration supporting the Petition.

3. I sent the Petition because of abuse against me by the Examiner, Dr. Palabrica. I included detailed, substantive reasons supported by Evidence and Declarations. It has all been ignored.

4. Instead of responding at all, the Decision has fabricated a false impression that the above-entitled invention was abandoned based upon nothing more than false statements by Mr. Friedman.

5. Patent application '480 was not abandoned. The second final Office action was on January 11, 2005. I filed a valid Continuation. The date stamp of the USPTO confirms this as does the filing date of patent application '258.

I declare that all statements herein of my own knowledge are true and that all statements made on information and belief are believed to be true.

Signature of Inventor:

October 29, 2010



Mitchell R. Swartz, ScD, MD